

1  
2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8  
9

10 IN RE: Bard IVC Filters Products  
11 Liability Litigation  
12  
13

Case No. MDL 15-02641-PHX-DGC

14  
15  
16 **AGREED MOTION TO ESTABLISH THE**  
**LCHB BARD IVC QUALIFIED**  
**SETTLEMENT FUND AND TO APPOINT**  
**FUND ADMINISTRATOR**

17  
18 **AGREED MOTION TO ESTABLISH A QUALIFIED SETTLEMENT FUND, AND**  
**TO APPOINT A FUND ADMINISTRATOR**

19  
20  
21  
22  
23 Lieff Cabraser Heimann & Bernstein, LLP (“Claimants’ Counsel”) hereby files  
24 this Agreed Motion to Establish A Qualified Settlement Fund And To Appoint Fund  
25 Administrator (the “Motion”) and respectfully moves this Court for an Order (a) to  
26 establish a fund, which shall be called the “LCHB Bard IVC Qualified Settlement Fund”  
27 (the “Fund”), (b) to appoint the Fund Administrator. This Motion is substantively  
28 identical to two motions recently filed by other counsel in this litigation and approved by  
this Court. *See* Doc. Nos. 21626, 21627.

In support of this Motion, Claimants’ Counsel respectfully states as follows:

1. Lieff Cabraser Heimann & Bernstein, LLP represents plaintiffs and other  
2 individuals, collectively “Claimants,” who are asserting claims and seeking damages  
3 arising out of certain alleged acts and events against Defendant C.R. Bard, Inc.  
4  
5  
6  
7  
8

1           2. Defendant C.R. Bard, Inc., including Defendant's parent companies,  
 2 affiliates, subsidiaries, and any and all other of its past, present, and future related entities  
 3 (collectively, "Bard") is alleged to be liable for Claimants' claims.

4           3. Bard denies any and all liability to Claimants. In an effort to resolve their  
 5 outstanding disputes, the Parties entered into a confidential "Master Compromise,  
 6 Settlement, Release and Indemnity Agreement" between Bard, on the one hand, and  
 7 Claimants' Counsel on the other hand (hereinafter the "Master Settlement Agreement").  
 8 Bard entered into the Master Settlement Agreement solely to avoid the expense,  
 9 inconvenience, and burden of litigation, and the distraction and diversion of its personnel  
 10 and resources; and has done so without admission of liability or wrongdoing.

11          4. Bard has agreed to pay to the Fund a confidential settlement amount  
 12 ("Settlement Amount") in full settlement and discharge of all of the Claimants' claims and  
 13 in exchange for a full release and discharge and satisfaction of other settlement  
 14 requirements by Claimants, as set forth in the Master Settlement Agreement and the  
 15 Confidential Settlement Agreement and Release (hereinafter, the "Release"). The Master  
 16 Settlement Agreement contemplates that the exact allocation among, and distribution to,  
 17 the Claimants in settlement of their claims will be finalized at a future time based upon  
 18 determinations that have yet to be made, which include consideration of the circumstances  
 19 of the individual Claimants. Furthermore, the final reimbursement amount, if any, alleged  
 20 by Medicare, Medicaid, and/or private lien holders with respect to these claims is also yet  
 21 to be determined. The Parties, therefore, ask this Court to order the establishment of the  
 22 Fund to facilitate resolution of those claims through collection, allocation, final  
 23 disbursement, and accounting of settlement proceeds and to appoint a Fund Administrator  
 24 in connection with these activities.

25          5. Upon establishment of the Fund, and pursuant to the terms of the Master  
 26 Settlement Agreement, Bard shall pay or cause to be paid the agreed-upon Settlement  
 27 Amount into the Fund by wire transfer or check made payable to the Fund. All aspects of  
 28 the administration of the Fund shall remain subject to the jurisdiction of the Court until

1 such time as the Fund has settled all eligible claims according to the terms of the Master  
 2 Settlement Agreement.

3       6. The Fund shall be a Qualified Settlement Fund as described in Treas. Reg.  
 4 Section 1.468B-1, established by order of this Court, and the Fund shall remain subject to  
 5 the continuing jurisdiction of this Court until such settlement payments are distributed to  
 6 eligible claimants according to the terms of the Master Settlement Agreement. Settlement  
 7 payments within the Fund will be held in a fiduciary capacity. The Fund shall comply  
 8 with the Treasury Regulations Section 1.468B-1 et seq. regarding taxation and tax  
 9 reporting obligations.

10       7. This Court shall have jurisdiction over this matter under Treas. Reg. Section  
 11 1.468B-1(c)(1), which states in relevant part that a Qualified Settlement Fund “is  
 12 established pursuant to an order of, or is approved by, the United States, any state  
 13 (including the District of Columbia), territory, possession, or political subdivision thereof,  
 14 or any agency or instrumentality (including a court of law) of any of the foregoing and is  
 15 subject to the continuing jurisdiction of that governmental authority.” The Fund  
 16 Administrator and/or its attorneys shall be indemnified and held harmless against  
 17 reasonable expenses, costs and fees (including attorney fees), judgment, awards, and  
 18 liabilities of all kinds incurred by the Fund Administrator from any and all claims made  
 19 by any person or entity that attempts to assert a right of payment, reimbursement or  
 20 garnishment against the Fund, except to the extent that it is finally determined by this  
 21 Court that the Fund Administrator and/or its attorneys was/were negligent or acted with  
 22 willful misconduct in connection with the administration of this Fund.

23       8. Claimants request that the Court approve the appointment of ARCHER  
 24 Systems, LLC (“ARCHER”) as the Fund Administrator (the “Fund Administrator”).  
 25 ARCHER possesses comprehensive knowledge and experience administering qualified  
 26 settlement funds. ARCHER submits to the personal jurisdiction of this Court. The Fund  
 27 Administrator shall, upon request, prepare and deliver to the Court such reports related to  
 28

1 the administration of the Fund as the Court may request from time to time. ARCHER's  
 2 address is as follows: 1775 St. James Place, Suite 200, Houston, TX 77056.

3       9. With the approval of and upon an order of this Court, the Fund shall fully  
 4 settle, subject to the satisfaction of all applicable terms and conditions as set forth in the  
 5 Master Settlement Agreement, all eligible claims. No settlement proceeds shall be set  
 6 apart for any individual Claimant, or otherwise made available so that he or she may draw  
 7 upon or otherwise control said settlement proceeds until such time as the Release is  
 8 executed by such Claimant and all other applicable terms and conditions are satisfied, in  
 9 accordance with the Master Settlement Agreement.

10     10. Subject to satisfaction of all applicable terms and conditions set forth in the  
 11 Master Settlement Agreement and the Release, the Fund shall be liable to make payments  
 12 to eligible claimants in the manner so specified in the Master Settlement Agreement.

13     11. In some circumstances, Claimants may elect a structured settlement annuity.  
 14 Likewise, Claimants' Counsel may elect to place all or a portion of their contingent legal  
 15 fees into one of several types of tax-advantaged investments as Plaintiffs' attorneys have  
 16 the ability defer fees until a later taxable year. To facilitate Claimants' structured  
 17 settlements or attorney fee structure(s), if any, the Fund, by and through the Fund  
 18 Administrator, may purchase and assign structured settlements, whether "qualified" or  
 19 "non-qualified." Any "qualified" structured settlement shall be issued by a life insurance  
 20 company that holds an issuer credit rating equivalent to a National Association of  
 21 Insurance Commissioners NAIC 1 designation. Claimants request that no bond be  
 22 required, provided the Fund, which includes all principal and interest earned thereon,  
 23 shall be deposited in an account comprised of (a) any obligations of, or any obligation  
 24 guaranteed as to principal and interest by, the United States of America or any agency or  
 25 instrumentality thereof, including the Federal Deposit Insurance Corporation; or (b) U.S.  
 26 dollar denominated deposit accounts with domestic commercial or national banks that  
 27 have a short term issuer rating on the date of purchase of "A-1" or better by S&P or  
 28 "Prime-1" or better by Moody's and maturing no more than 360 days after the date of

1 purchase (provided that ratings on holding companies are not considered as the rating of  
2 the bank); or (c) money market accounts or money market funds registered under the  
3 Federal Investment Company Act of 1940, whose shares are registered under the  
4 Securities Act, and rated “AAAm” or “AAAm-G” or better by S&P, and “Aaa,” “Aal” or  
5 “Aa2” if rated by Moody’s, including any mutual fund for which the Fund Administrator  
6 or an affiliate of the Fund Administrator serves as investment manager, administrator,  
7 shareholder servicing agent, and/or custodian. Income realized by investment of the Fund  
8 shall be available to the Fund Administrator as payment for tax preparation and filing,  
9 quarterly and annual tax payments, general administration services including, without  
10 limitation, the fees and costs associated with investment advisors, accountants, agents,  
11 managers, attorneys, actuaries, auditors, or insurers, which are incurred to maintain and  
12 administer the Fund. Any investment losses realized by investment of Fund or any portion  
13 thereof shall be charged to the Fund. To the extent the Fund Administrator invests any  
14 funds in the manner provided for in this paragraph (“Eligible Investments”), Claimants’  
15 Counsel, Defendant, and Fund Administrator shall not be liable for any loss(es) which  
16 may be incurred by reason of any such investment (or reinvestment) including, but not  
17 limited to, loss(es) that occur due to decreases in account value as a result of negative  
18 yields on direct or indirect investments in Eligible Investments. Such funds should be  
19 invested such that the following investment policy is implemented, as appropriate: (i)  
20 safety of principal; (ii) zero bank balance exposure through use of custodial/trust accounts  
21 (to avoid the risk of bank deposit forfeiture); and (iii) zero sweep disbursement accounts.  
22 In no instance will securities held pursuant to this agreement be lent or hypothecated. The  
23 Escrow Agent shall be responsible for following the investment requirements of this  
24 paragraph, pursuant to the instructions of the Fund Administrator. Upon receipt of  
25 directions to distribute funds, the Fund Administrator may direct the Escrow Agent to  
26 liquidate appropriate Fund investments and place the funds in an FDIC- insured demand  
27 deposit account established with the Escrow Agent consistent with subparagraphs 6(c)  
28 above, which shall be a zero-balance account used solely for the purpose of making

1 distributions from the Fund.. The Fund shall be held at Citibank, NA, which is a financial  
 2 institution doing business in the State of New York (hereinafter “Escrow Agent”), for the  
 3 benefit of and titled in the legal name of the Fund according to the above terms and  
 4 conditions and the Master Settlement Agreement, and said financial institution shall be  
 5 responsible for any and all investment related decisions, pursuant to these terms and  
 6 conditions. Notwithstanding the foregoing, Escrow Agent shall not be allowed to  
 7 distribute any income or principal from the Fund except upon the written instructions of  
 8 the Fund Administrator upon written approval or authorization by Bard, or if requested,  
 9 upon an order of this Court in accordance with, or as may be otherwise provided in, the  
 10 Master Settlement Agreement.

11       12. Bard shall have no responsibility for the expenses or administration of the  
 12 Fund and shall have no liability to the Claimants in connection with such administration  
 13 or decisions made by the Fund Administrator in the discharge of any and all Settlement  
 14 Administrators’ duties. Said expenses, if any, may be paid out of the Settlement Amount  
 15 deposited and held in the Fund. Bard shall cooperate in the administration of the Fund to  
 16 the extent reasonably necessary to effectuate its terms, including providing all information  
 17 reasonably necessary for the Fund Administrator to complete the Fund’s accounting.  
 18 Aside from the foregoing sentence and subject to Bard’s rights under the Master  
 19 Settlement Agreement, no relationships or responsibilities are created hereby between  
 20 Bard and the Fund and its Fund Administrator. Bard shall in no way be associated with  
 21 the administration of the Fund or be liable in respect of any dispute between or among any  
 22 Claimants and their respective counsel in respect of any costs, expenses, legal fees or  
 23 litigation costs to be deducted from the Fund.

24       13. Claimants request that the Fund Administrator be authorized to incur costs  
 25 necessary to administer the Fund and hire professionals and other experts necessary to  
 26 administer the Fund, including but not limited to, accountants, Special Masters counsel,  
 27 mediators or arbitrators, as necessary. Upon the satisfaction of all applicable terms and  
 28 conditions set forth in the Master Settlement Agreement, all amounts to be paid from the

1 Fund pursuant to the Master Settlement Agreement, including all expenses which may be  
2 incurred by the Fund Administrator and all costs associated with providing the agreed  
3 Releases shall be paid from the Fund or by Claimants' Counsel and shall not be the  
4 responsibility of Bard. Distribution of these Fund amounts shall not require further Court  
5 Order.

6 14. All taxes on the income component of the Fund and expenses and costs  
7 incurred in connection with the taxation of the Fund (including, without limitation,  
8 expenses of tax attorneys and accountants) shall be paid out of the Fund, shall be  
9 considered to be a cost of administration of the settlement, and shall be timely paid by the  
10 Fund Administrator without prior order of the Court.

11 15. Subject to the terms and conditions in the Master Settlement Agreement, the  
12 Fund Administrator shall have the right to rely upon any affidavit, certificate, letter,  
13 notice, electronic mail, or other document believed by the Fund Administrator to be  
14 genuine and sufficient, and upon any other evidence believed by the Settlement Claims  
15 Administrator, in his reasonable judgment, to be genuine and sufficient, which may be  
16 provided to the Fund Administrator by the Claimants, Bard, or their counsel.

17 16. The Fund Administrator shall be authorized to distribute all attorneys' fees  
18 and expenses to counsel for Claimants consistent with existing contingency fee contracts,  
19 upon deposit of settlement proceeds in the Fund and satisfaction of the required terms of  
20 the Master Settlement Agreement. Court approval for such distributions shall only be  
21 required to the extent required by law for claims involving deaths and/or minors.

22 17. Upon completion of any structured settlements agreements and final  
23 distribution of monies paid from the Fund to eligible claimants under the terms of the  
24 Master Settlement Agreement, the Fund Administrator shall take appropriate steps to  
25 wind-down the Fund, including remitting unused funds back to Bard, as dictated by the  
26 Master Settlement Agreement and thereafter be discharged from any further responsibility  
27 with respect to the Fund.

28

1       18. To the extent any paragraphs in this Motion conflict or are in any way  
2 inconsistent with the terms and conditions of the Master Settlement Agreement, the  
3 Master Settlement Agreement controls.

4       19. The Fund Administrator will obtain a Federal Taxpayer Identification  
5 Number for the Fund that is the subject of this Motion, upon the execution of an order by  
6 the Court establishing the Fund.

7       20. WHEREFORE, Claimants respectfully request that the Court enter an  
8 Order:

9           a. Establishing the Fund as a Qualified Settlement Fund within the  
10 meaning of Treas. Reg. Section 1.468B-1 and pursuant to the jurisdiction conferred on  
11 this Court by Treas. Reg. Section 1.468B-1(c)(1);

12           b. Appointing ARCHER as the Fund Administrator pursuant to the  
13 terms, conditions, and restrictions of this Motion and granting said Administrators the  
14 authority to conduct any and all activities necessary to administer this Fund as described  
15 in this Motion;

16           c. Authorizing the Fund, subject to the approval of and upon further  
17 order of this Court following joint motion by Claimants and Bard under the terms and  
18 conditions as set forth in the Master Settlement Agreement, to enter into individual  
19 Releases with persons asserting Claims, including the use of settlements with periodic  
20 payments and authorizing the Fund to effect qualified assignments of any resulting  
21 structured settlement liability within the meaning of Section 130(c) of the Internal  
22 Revenue Code to the qualified assignee;

23           d. Authorizing the Fund Administrator, following completion of all  
24 structured settlement agreements and final distribution of monies paid from the Fund to  
25 eligible claimants under the terms of the Master Settlement Agreement, to take  
26 appropriate steps to wind-down the fund, including remitting unused funds back to Bard  
27 and thereafter discharging the Fund Administrator from any further responsibility with  
28 respect to the Fund.

1 Dated: October 15, 2020

2 Respectfully submitted,

3 

4 Wendy R. Fleishman  
5 wfleishman@lchb.com  
6 250 Hudson Street, 8th Floor  
7 New York, NY 10013-1413  
8 Telephone: (212) 355-9500  
9 Facsimile: (212) 355-9592

10  
11 On behalf of Claimants

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 15, 2020, the foregoing AGREED MOTION TO ESTABLISH THE LCHB BARD IVC QUALIFIED SETTLEMENT FUND AND TO APPOINT FUND ADMINISTRATOR in this matter was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on all counsel of record.

Wendy R. Fleishman